amo REPORT

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DISCUSSION PAPER ON LOT LEVIES AND FRONT-END FINANCING

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO

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ASSOCIATION OF MUNICIPALITIES OF ONTARIO

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The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

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UPDATE REPORT ON LOT LEVIES AND FRONT-END FINANCING

BACKGROUND

Over the past number of years, there have been several attempts by AMO and by many of its member municipalities to obtain a clear, firm legislative basis for the collection of lot levies (or development charges). To date these have not succeeded and the existing ambiguous legislation has remained, with each legal challenge from a specific developer against a specific municipality's lot levies being subject to individual, somewhat unpredictable, Ontario Municipal Board decisions.

At various points over the same time period, the development and home building industries have expressed a desire for stronger "front-end financing" legislation. This legislation was desired to allow a developer to construct or pay for capital works (which would benefit nearby landowners when they developed subsequently) with the assurance that the municipality would recover a portion of the cost from the subsequent developers. These funds would then be repaid to the original developer who had "front-ended" the initial cost. Such "front-end financing" legislation was unacceptable to the great majority of the municipalities in the absence of general lot levy legislation.

In 1985, in an attempt to find an acceptable solution to this controversial issue, the Minister of Municipal Affairs suggested the creation of a working group consisting of representatives of the municipalities, the developers and the home builders.

The Working Group (involving AMO, the Urban Development Institute, the Ontario Home Builders' Association and the Ministry of Municipal Affairs) met almost monthly from September, 1985 until November, 1986 and filed its final report to the Minister of Municipal Affairs in December, 1986. In that final report the Working Group stated that, while significant progress has been made toward a new framework for lot levies and front-end financing, it could not reach a consensus on all aspects. It asked that the Ministry initiate draft proposals or legislation which would be used as the basis for further consultation.

INTRODUCTION

It is anticipated that proposals or draft legislation will be prepared for further consultation during 1987. The purpose of this report is to explain fully to the members of AMO the position taken on this issue by AMO so that all will be able to contribute effectively to the consultation process. This report will review AMO's position on lot levies and front-end financing as approved by the Board of Directors on November 14, 1986 and identify the key principles which must be achieved if the municipal sector is to be fairly served by new legislation.

SECTION A: LOT LEVIES

AMO'S POSITION AS APPROVED BY THE BOARD OF DIRECTORS

Lot levies (also known as development charges) represent amounts assessed against new development as a condition of the development proceeding. Levies are established to recover from new development the growth-related capital costs which the municipality will incur to provide facilities to service the development. These charges assessed on a per unit or acre basis, include not only municipal facilities which may be required at the site of the development but also a proportionate share of the cost of off-site facilities which will be required as part of the broader municipal service network to serve the development.

1. AREAS OF CONSENSUS WITH DEVELOPMENT AND HOME BUILDING INDUSTRIES

a. Legislation Required

AMO believes that new legislation for lot levies would be beneficial to remove the uncertainty which presently exists provided that the legislation adequately protects the interests of municipalities. The legislation should be permissive, such that those municipalities which wish to impose levies may do so, while those which do not wish levies may elect not to impose any.

b. Levies Recover Growth-Related Capital Costs

There is a strong consensus, supported by AMO, that lot levies should be set to recover only the growth related capital costs which will be incurred by the municipality in order to

service new development. Lot levies should not be established to fund a community-wide upgrade of service or the replacement of depleted facilities at the expense of new development, nor should lot levies be used to recover ongoing municipal operating costs.

Lot levies are intended to offset the growth-related capital requirements such that the existing community does not subsidize those capital facilities which are required to service new development.

Consensus has not been achieved with the development and home building industries regarding the degree to which all growth-related municipal capital facilities can be included in, and financed through, lot levies. The AMO position on this critical matter is discussed below in section A. 2.

c. Average Cost/System-wide Uniform Levies

The majority of facilities which a municipality must provide to service growth are not located within the development itself but are off-site, often at a considerable distance. These facilities (such as major roads, trunk and treatment works, waste disposal facilities, major parks and recreation centres and police and fire divisional buildings) form part of a municipal system which provides service across either the entire municipality or broad service areas within the municipality.

The concept of uniform system-wide levies is now generally accepted and was reinforced in 1986 with the guidelines provided by the Ontario Cabinet in the matter of the Petition of the Town of Bradford. Uniform system-wide levies allow municipalities to employ an average costing system when determining the amount of lot levies to be charged - averaging the cost of the required facilities within a service area across all units of development within that service area.

AMO continues to support the inclusion of off-site costs in municipal lot levies by means of an average costing system and accepts that only those costs which are growth-related should be included in such a system.

d. Use of Levies to Fund Debt Charges

As noted above, lot levies are designed to recover the growth-related capital costs and not to subsidize the ongoing municipal operating costs. Situations do exist, however, where the municipality has been required to construct the necessary facilities prior to all of the growth occurring. In these cases (such as major trunk and treatment works, roads or recreation facilities) the municipality may have incurred debt to finance the work as the future lot levy receipts were not yet available. The municipality, and its existing ratepayers, will therefore be servicing debt charges in the future relating to growth-related capital facilities.

In cases such as these AMO believes it is appropriate that the lot levy amount include the total growth-related cost of the facility and that the lot levy funds, when collected, be used to fund the growth-related debt charges. In this way, lot levy receipts could be transferred to the current budget to offset that portion of the debt charges which arose from the construction and debt-financing of growth-related facilities.

e. Indexation of Lot Levy Amounts

When lot levy amounts are determined, they are established for a number of years (based primarily upon the growth-related capital facilities to be constructed in the future). They are normally not reviewed on an annual basis but updated after several years or when material changes occur.

In this context, it is imperative that a simple method be incorporated to adjust the lot levy amounts over time consistent with inflation. Only in this way will the lot levy receipts be kept current with the costs faced by the municipality in the future to construct the facilities.

AMO strongly supports the consensus reached that lot levy amounts may be adjusted over time by applying a generally-available construction cost index to the initial levy amount. It is also agreed to allow adjustment methods other than generally-available indices in specific situations where it could be established and agreed-upon that such other adjustment methods more accurately reflect specific local conditions.

f. Levies Allowed on Different Classes of Development

Lot levies are most commonly assessed against residential development but many municipalities also charge levies for commercial and industrial development to help off-set the capital costs of that development. AMO believes that new legislation should permit levies on different classes of development, at the option of the municipality. In this manner, a municipality would be allowed to charge levies on only one class of development (usually residential) if it so wished but would have the option of extending the charge to other classes of development.

This permissive authority requires, however, that the value of the lot levy for each class of development be set so as to recover only the growth-related capital costs generated by that particular class of development.

g. Increased Densities due to Revised Development Plans

Revisions often occur to development plans as they proceed through the planning process and can result in development densities being altered. Rezonings, revisions to plans of subdivisions and conversion of plans from rental to condominum are typical of such changes. This is of particular importance in cases where the levy amounts have changed since the time of the initial development agreement.

In cases where the original development proposal was governed by an agreement to pay levies to the municipality or municipalities (if both a regional and area municipality are present in the particular location) or where the landowner has previously paid the levies to the municipality or municipalities, a consensus has been reached on the levies to be applied to the new densities.

In these cases, the net increased density would attract whatever levy amounts were in force at the time of the revised development application. Development up to the original density would remain covered by the previous agreement or payments. If the revised development plan resulted in no change in density, no change in levies would apply. If a decrease in the development potential resulted from the change, the former per unit charge would apply to the new lower number of units.

This approach is considered fair in that it commits the municipality or municipalities and provides certainty for the developer up to the limit of development previously approved. It requires, however, that any increased development potential being introduced at the time of the revision pay its share of the current capital costs as reflected in the lot levy at the time of the revision.

While consensus has been reached on these cases where all affected municipalities were adequately covered by the initial development agreement, two major issues remain unresolved. These issues, which will be discussed in section A. 2. below relate to:

i) situations involving "pre-zoned" land, where the development agreements in place do not include the needs of the present municipalities often because of changes in the municipal structure since the execution of the agreements. This is most often the case involving agreements which pre-date the creation of regional government but also includes those situations where lots were created prior to the existence of any lot levy policy.

ii) the length of time that a development agreement establishing lot levy amounts should be in force, despite future changes in lot levy amounts. This issue deals with whether a time limit should be established, during which development can proceed with former levy amounts and after which the devlopment agreement is deemed to include the new lot levy amounts. Both of these critical issues will be discussed in detail in section A. 2.

h. Timing of Payments

AMO supports the consensus that, under normal circumstances, payment of lot levies should occur at the time of building permit issuance. However situations do exist and must be accommodated, where, by agreement between the municipality and the industries concerned, levies may be required at an earlier stage in the development process (e.g. draft plan approval). This will address the situation where major works must be constructed prior to the development coming on stream. These latter situations would, of course, involve subsequent adjustments at the building permit stage when the final number of units is actually determined.

i. Credit to Levy Amounts for Works Constructed by Developers

In certain situations, a developer may be required to construct certain external capital facilities in order for this development to proceed. To the extent that these works form part of the overall municipal service system and were included in determining the levy amount, the developer should receive a credit against the lot levies otherwise payable for that particular service.

j. Accounting and Disclosure Requirements

AMO supports the concept of full accountability in the reporting of the status and use of lot levy receipts. This will likely entail the maintenance of the levy receipts in a separate reserve or reserve fund, with function by function accounting within one fund . (Example: water services, sewage treatment, roads, etc.) Interest should be credited to fund balances to ensure the maintenance of the buying-power of the fund into the future. The use of lot levy funds would be subject to full disclosure to ensure the funds are applied to growth-related capital projects.

k. Procedure for Establishing Lot Levies - OMB Role

A consensus has developed, which AMO supports on a conditional basis, regarding the approval process for, and OMB role in, establishing lot levies.

The concept is similar to the approach advocated by AMO in the early 1980's. It involves the municipality submitting a by-law to the OMB for approval prior to the by-law coming into force. The by-law would be advertised and objections directed to the OMB, which could order a hearing for legitimate objections. While the by-law was under review, developers would be required to pay the amounts included in the previous by-law, if there was one in place and provide security for any increased levy amount i.e. a letter of credit. Procedures must still be developed to govern the payments received during the review period.

This procedure, entailing OMB approval up-front, is different from the present situation. At the present time the by-law is effective at the time determined by the municipality and the terms of the by-law are set as conditions of development. Any developer wishing to appeal the condition to the OMB must de-

lay his development until the OMB rules. This delay does act at times as a significant deterrent to developers' appealing lot levies.

The proposed procedure involves a hearing, if necessary, prior to the by-law coming into force and allows development to proceed while awaiting the OMB hearing and decision. After approval, no subsequent developer can challenge the validity of the levy amounts in individual OMB hearings.

AMO is prepared to support this new approach on conditions - the primary being that:

i) this new approval process be established as part of a lot levy package which meets AMO's requirements as a whole, including the identification of services which may be included in the lot levy, and

ii) detailed procedures can be established to ensure that a municipality is not at risk while it accepts and expends lot levy funds while the by-law is awaiting OMB hearing and approval.

iii) the by-law would be subject to appeal only during the OMB hearing period. The appellant would have to provide details regarding application of the formula to his site, and give reasons for filing an appeal.

These conditions and their implications are discussed further below in section A. 2. and C.

1. Phase-in of New Legislation

AMO strongly supports the consensus which has emerged concerning the need for a phase-in period to be provided in any new legislation. A significant number of municipalities currently have lot levies and the OMB would not be able to deal with new by-laws from all of them in a short time period. It is AMO's belief that a phase-in period of 2-3 years is required, during which current lot levies apply and during which the new by-laws and any necessary studies could be prepared. After this phase-in period no levies could be applied to development agreements unless established in accordance with the new legislation.

m. Relationship of Front-End Financing to Lot Levy Legislation

A consensus has developed, at AMO's insistence, that front-end financing legislation can not proceed alone but must form part of the general lot levy legislation. There are very strong linkages between the two proposals which can only be addressed as one consolidated legislative package.

As discussed in detail later under Front-End Financing, some situations will require a developer to pay for a work which may have no relation to the system-wide uniform lot levies. Other situations must be provided for, however, where a developer front-ends a capital facility which is part of the general lot levy. In this case the developer will be repaid from general lot levy receipts attributable to that particular service. These situations require a consistent legislative package dealing with both lot levies and front-ending.

While consensus has been reached on this issue, the other parties appear less committed to it than is AMO. The reasons why AMO sees this link as a requirement are dealt with in section C, "Key Issues".

2. AREAS WHERE CONSENSUS NOT REACHED

A working consensus has been achieved, subject to the detailed provisions of the legislation, on all of the lot levy matters in section A. 1. above. This section sets out the areas where significant differences still exist in the positions of AMO and the development and home building industries. It is of critical importance that these issues and the rationale of the AMO position be clearly understood by all municipalities so that effective input can be made to the consultation process should draft legislation be forthcoming.

a. Application Services Included in Lot Levies and Percentage Leviable for Each

The issue of which facilities may be included within and financing from lot levies has been the major problem in achieving lot levy legislation for more than a decade. While the development and home building industries have agreed to pay 100% of the growth-related costs of hard services (sewers, water and roads), they have traditionally objected to AMO's

demand that the legislation provide for all other municipal services (often referred to as "soft" services).

Althought the two industries have moved closer to AMO's position and have included numerous "soft" services on the list of leviable services, consensus has not yet been achieved on this, the most critical, issue.

AMO's position on this matter is as follows. While there was a time in the distant past when municipal services consisted of only sewer, water and roads, this is no longer the case. An urban municipality is now faced with very real, non-discretionary costs related to a number of other services, ranging from solid waste disposal facilities and police and fire divisional buildings to parks and recreation facilities, day care facilities and health service facilities. AMO believes that the costs to provide these capital facilities to new development are indeed growth-related costs.

It is this concept which is the cornerstone of the AMO position. Lot levies will not be legislated to provide services beyond the level which exists in the community, to upgrade the service level for the whole community or to introduce, throught funding by developers, services which do not already exist in the community. Lot levies are intended to finance the provision of the generally-prevailing level of service to the new development. Lot levies are intended to offset only those costs which the municipality faces to service growth at the generally-prevailing level - costs which the municipality would not incur at all if it were not for development.

For some services, those traditionally know as "hard" services - sewers, water and roads, consensus has been reached that levies may recover and be used to finance 100% of the growth-related costs of development.

AMO has compromised on the remainder of municipal services in order to achieve consensus. AMO has agreed to limit the percentage of the growth-related costs which can be recovered through levies to:

90% in the case of
- solid waste facilities
- divisional police and fire buildings and equipment
- transit

and 75% for the
remaining services of
- community centres
- arenas
- aquatic centres
- libraries
- major parks
- hospital construction
- health centres
- day care
- homes for the aged
- general government

These reduced percentages would allow municipalities to charge as part of the lot levy 75%, for example, of the growth-related cost of a community centre. The remainder of the growth-related share of the cost (and all of the costs of a project which are not growth-related) must be financed by the municipality.

While these lower percentages were suggested in an attempt to reach consensus, they are not without logic. Using community centres, as an example, it is to be expected that the existing community centres in a municipality would have been constructed at various times in the past. When lot levies provide funding for a new centre, this centre will be newer and thus of higher quality than the existing capital stock. It is not totally unreasonable, therefore, to ask the existing community to finance 25% of the cost through general municipal financing. The quality of services available to the existing community will have been slightly increased by the construction of the new facility. Under the AMO proposal, the other 75% of the growth-related cost would be appropriately financed by the new development through lot levies.

The development and home building industries have suggested significantly lower percentages for most services - zero in several cases. Suggestions of percentages below 75% are unacceptable to AMO for several reasons. Firstly, these services are no longer discretionary capital facilities. They are demanded by the new resident who expects the current service level to be made available to new areas. In fact, the presence of these facilities often features prominently in development advertising. Secondly, the percentages suggested by AMO represent the developers' share of only the growth-related cost of capital facilities. The developers will pay nothing

through lot levies toward upgrading service levels or replacement of outdated capital facilities.

AMO has indicated its willingness to consider a further comprise as part of an overall package. However, AMO is not prepared to consider totally excluding museums, art facilities and theatres, from lot levies. Discussions have occurred regarding exclusion of general government, and there may be some flexibility in this area. This may be necessary to achieve an agreement, in recognition that it is difficult to apportion the costs of these facilities equitably between the existing community and the new development.

Second, AMO and the development and home building industries have serious concerns about the long-term continuation of present provincial subsidy levels for capital projects. These industries express concern that if they accept lot levy funding for the municipal share of homes for the aged, hospitals, health centres or rapid transit, for example, then the province may reduce its subsidies allowing the developers' share to be forced higher. There have been discussions regarding limiting the lot levy funding on these subsidized services so that the lot levy share is based on today's subsidy levels. Any reduction or increase in subsidy would not automatically change the developer's lot levy share but would lead to a three party review involving the industries, AMO and the province.

On this critical issue of which services may be included in lot levies and at what percentages, AMO has been willing to compromise for the reasons noted below in order to achieve agreement.

AMO believes that the new lot levy legislation should apply to all development whether or not they were governed by prior development agreements. This would include prezoned lands where there was not a development agreement, and the new legislation would permit municipal lot levy by-laws to provide up to a three year phase-in period.

b. Levies on "Prezoned" Lands

It was noted that agreement had been obtained that current levies would apply to net increased densities from revised development plans if the former development plans had satisfactorily addressed the lot levy needs of all municipalities involved.

Consensus was not reached, however, on the issue of lot levies on "prezoned" lands. These situations arise in two ways.

First, development agreements exist in many regional municipalities which pre-date the region's existence. These agreements, now more than 10 years old, were proper at the time they were signed but are totally inappropriate today in addressing the needs of the municipalities involved. "Prezoned" land situations also exist in the case of vacant buildable lots within urban areas, where no development agreement exists as the lot was created prior to the existence of a municipal lot levy policy.

In both of these situations, development has had ample opportunity to proceed but it has not. AMO strongly believes that the new lot levy legislation should provide a mechanism for these lands to be brought into the current lot levy context. Had these lands developed in the past, levies may not have been payable, although many developers have agreed to pay both local and regional levies in recognition of the need for the municipal services. When developed, these lands will generate the same growth-related costs as other new development lands and AMO believes they should be making the same lot levy contribution.

AMO acknowledges, however, that a change in the lot levy status of these lands does alter their development profitability somewhat. AMO is prepared, therefore, to phase-in the application of full local and regional levies to these "prezoned" lands.

During the negotiations with the industries concerned, AMO recommended that a two or three year phase-in be employed. This would allow these lands to develop in the next two or three years without changes in their levy status. After the completion of that time period, however, the development would be subject to levies in accordance with both the area municipal and regional lot levy policies. This suggestion provides a reasonable time period for the development to proceed under current terms yet provides a mechanism to recover growth-related costs in the future if the development does not proceed in the short term.

AMO also believes that a two or three year phase-in period should apply to changes in lot levy amounts. If the lot levy by-law is amended and the amounts altered, the new amounts should apply, whether higher or lower, to any development plans which do not proceed to the building permit stage within a two or three year period. Again, this proposal gives the developer or home builder an opportunity to proceed under the previous terms within a reasonable time period. If the developer chooses not to proceed within that period, however, the development would pay the new levy amounts which reflect costs at the time when it proceeds.

While the development and home building industries understand AMO's position in this regard, no consensus has been reached on this issue.

AMO believes that any new legislation should permit municipal lot levy by-laws to provide a two (or three) year phase-in period, after which the new lot levies would apply to all developments whether or not they were governed by prior development agreements.

c. Procedures for Establishing Lot Levies - OMB Role

As noted in section A. 1., AMO is prepared to accept the up-front approval role of the OMB, as part of a comprehensive lot levy package, on the condition that the administrative procedures and timing can be resolved.

The Association believes that the proposed procedure regarding an OMB hearing for approval of a comprehensive lot levy by-law is supportable by the municipal sector, only under the following conditions;

- o the lot levy by-law would be subject to appeal to the OMB only during the hearing or referral period.

- o If challenged during this period the developer would provide a notice of appeal setting out the objection to the by-law, the site application, and the reasons in support of the objection. An explanation of the purpose and effect of the by-law, and describing the lands to which the by-law applies, would be provided.

Once the by-law has been upheld by the OMB, further appeals could not be filed. If the Board ruled in favour of the appellant, the revised lot levy charge would be applicable only to the appellants' development. The original lot levy by-law would by unchanged (unless there was a ruling by the OMB after the hearing process) and would be applicable to all other appropriate development.

The current proposal entails the passage of a by-law which would remain in force for up to five years, with an amending by-law being passed at that time to update the lot levy amounts. The by-law would be subject to appeal to the OMB prior to its coming into force but once it was approved by the OMB it could not be challenged during its currency.

While the five year time period is appropriate for normal circumstances and is supported by all parties, AMO believes that municipalities must have the right to amend the by-law, if circumstances warrant, at earlier intervals. This amending by-law would, of course, be subject to OMB approval and hearings if necessary, prior to coming into force. The development and home building industries have agreed to this provision to amend only if they too can force such a review. This is seen as unworkable and strongly opposed by AMO.

An industry-initiated review would subject the by-law process to the possibility of extreme nuisance applications, wherein any developer who did not agree with a by-law already approved by the OMB, could somehow force the municipality to undertake a levy review. The possibility of continuous review is not unimaginable. In addition to the disruptive nature of such a provision, a second problem is presented in that developers or homebuilders would be allowed to request such reviews but the cost of conducting the update studies would be at the expense of the municipality. Industry-initiated revisions are not, in the opinion of AMO, workable and are strongly opposed.

AMO recommends the provision of a five-year period for the life of the lot levy by-law with the municipality retaining the right to update the levy study and amend the by-law within the five-year period at the municipality's discretion.

The major administrative procedures which require resolution revolve around the collection and use of levy funds while a by-law is awaiting OMB approval. To avoid potential administrative problems, the Association suggests that the current lot levy formula should be applied, during the time period of lot levy study and OMB approval, the phase in period. Once the new by-law and lot levy charge is up-held and approved by the OMB' the developer would be required to pay all additional charges. While this is of some assistance it does not totally resolve all problems.

If the new by-law is not up-held by the OMB, the municipality would not encounter the critical situation of returning funds that it may already have committed or spent on necessary growth-related capital facilities. However a municipality may also be required to make decisions to use lot levy funds during the approval time period, as the construction of works may be necessary to accommodate the growth. Financial difficulties could arise if the municipality was restricted to the "old" lot levy formula. Also this does not address the situation of municipalities implementing their first lot levy by-law.

A further problem exists in that the scope of the OMB in making its decision has yet to be detailed, discussed and agreed upon. Is the OMB to have only the power to accept or reject a new lot levy by-law (with rejection meaning the former by-law will stay in force until a new proposal is brought forward) or is the OMB to have the power to alter the lot levy amounts as it sees fit in that particular case? Clearly, the implications to the municipality are serious if the OMB can set a levy amount with which the municipality must live for up to five years. While these details are not yet known, the potential implications are of concern to AMO.

AMO is prepared to support the inclusion of up-front OMB approval in the new lot levy legislation only on the conditions that it forms part of an acceptable comprehensive package, provides a sufficient phase-in period and provides appropriate administrative procedures which, following consultation with and review by AMO, are acceptable to AMO.

SECTION B: FRONT-END FINANCING

Front-end financing is used to describe situations where a developer or homebuilder is required, to enable his development to proceed at a earlier time than the municipal servicing would normally allow, to construct capital works of benefit to other landowners when those other lands develop. These capital works most often involve sewers, water services or roads but could involve other municipal services as well. The development and home building industries wish to see legislation which will give municipalities the clear authority to enter into agreements with the developer constructing the works and to define a benefitting area to ensure that he will be repaid in the future by other benefitting landowners when and if those other lands develop.

Front-end financing situations can vary greatly in size and scope. Often they are relatively small with one landowner front-ending the cost of a particular work which will benefit a few other landowners when they develop subsequently. In these cases, the industries wish a benefitting area to be defined for which a charge per unit will be applied to the subsequent development when and if it proceeds. This charge would be collected by the municipality and refunded to the original front-ending developer.

On occasion, however, these front-ending schemes are much larger and may involve works which were initially intended to be financed in the future from general system-wide lot levy receipts. In these cases, the front-ending developer which constructs the works wishes the municipality to collect subsequent amounts from numerous landowners when and if they develop and to refund amounts so collected to the initial developer. The charge on the subsequent developers would either take the form of a special charge or be a part of the system-wide lot levy if the capital work was a part of the system-wide levy. Some work may be of benefit to the existing community and may result in some form of future repayment being made by the municipality.

In the past, these situations have been handled in one of three ways. Many suggestions to repay the front-ending developer were simply turned down by municipalities as they lacked any clear legislative authority to collect subsequently and refund. In some cases, municipalities sought and received special legislation to define benefitting areas, set and collect charges and refund the original developer. In this second case, special front-end financing legislation was, in effect, obtained.

The third manner of handling these situations is quite common. The municipality would not obtain special legislation but would define the benefitting area and would agree to use its "best efforts" to collect from other landowners when they developed in the future. Any such collections would indeed be refunded to the original developer which constructed the work. The "best efforts" concept reflects the lack of legislation and indicates the uncertainly which the municipalities feel about the legal ability to collect in the future.

1. AREAS OF CONSENSUS WITH DEVELOPMENT AND HOME BUILDING INDUSTRIES

a. Legislation Required

There is general agreement that legislation is required to strengthen the municipalities' ability to set, collect and refund charges of this nature.

It is AMO's position that this should be permissive legislation, available to those municipalities which wish to avail themselves of it. Recent discussions indicate that the industries concerned wish to see such legislation mandatory, such that every municipality must utilize such systems if requested by a developer or builder. This disagreement will be discussed in section B. 2. to follow.

b. Relationship to Lot Levy Legislation

There is a consensus that front-end financing legislation should be linked to, and in fact form part of general lot levy legislation. While this has been accepted by the development and home building industries (due to the fact that the capital works being "front-end" may be part of the system-wide lot levy) their commitment to this linkage is not strong.

AMO sees the inclusion of front-end legislation as part of lot levy legislation as a fundamental issue. This addressed in Section C. below.

There is a strong consensus governing the front-ending of works which are part of the system-wide lot levy amounts. The municipality must react in one of two ways if it is proceeding under a front-ending agreement.

First, the municipality may leave the particular capital work(s) in its lot levy calculations and agree to repay the initial developer from normal lot levy collections for that service. Alternatively, the municipality may remove the work(s) from its general lot levy calculation and reduce the system-wide lot levy. In this case the municipality would make up for such a reduction by establishing a benefitting area for the work(s) and collecting this additional charge from development in that area. When collected, these amounts would be refunded to the initial developer.

c. Front-Ending Not Used to Permit Development of Unapproved Lands

Front-ending must not be used to encourage leap-frogging of development which would allow unapproved lands to come on stream simply by offering to front-end the cost of the necessary capital works.

There is agreement, therefore, that this provision would only apply to lands which are approved for development. While AMO has agreed to this general restriction, some concern exists that the municipalities will be in a weaker position with respect to encouraging the orderly sequence of development. This contributes to AMO's desire to see this legislation as permissive and not mandatory.

d. Establishment of Benefitting Area and Unit Charge

While the detailed procedures have not been discussed, there is general consensus that the municipality would have the authority to define the lands which would benefit from the construction of the "front-end" capital facility. It would also calculate an appropriate unit charge which would be expected to recover the appropriate share of the costs to be refunded to the initial developer.

e. Indexation of Unit Charges

There is agreement that the by-law establishing the benefitting area and unit charge would include a provision to adjust the unit charge over time in conjunction with a generally-available construction cost index. This is consistent with the philosophy inherent in the proposed lot levy framework and would ensure that the initial developer received a fair refund in the future.

f. Notification, Appeal and the Role of the OMB

It is envisaged that the municipality would be required to pubicise its intended front-end arrangement and to notify all landowners who are within the benefitting area and subject to a unit charge upon development. An appeal process, involving the OMB, would be in place such that objections to the arrangement are dealt with before it is put in place. Through this full notification and appeal process, the front-ending developer can be assured that no changes to the arrangement could be made in the future - after he has expended the monies to construct the necessary work(s).

g. No Registration of Front-Ending Scheme on Title

While the final details of the proposed system have yet to be established, there is agreement that the presence of the front-ending arrangement would not be registered on title of the benefitting lands. This alternative is seen as too disruptive to the existing landowners, farmers for example, who would not wish a cloud on their title - particularly when the cloud is activated only when the land develops.

The is consensus that the procedures must be such that the obligation on any land to pay the front-ending charge are clear enough that any prospective buyer of a property could be reasonably expected to be aware of these obligations upon development.

h. No Municipal Indebtedness

There is agreement that the legislation should replace the present "best efforts" concept with a firm commitment on the part of the municipality to repay funds to the initial developer when and if future development occurs. The legislation must be worded, however, in a way which implies no municipal liability or indebtedness with respect to the funds to be subsequently collected.

If no growth occurs, no funds will be collected and the municipality has no liability or indebtedness to the initial developer. Only when growth occurs are the charges collectible and the

municipal liability will be limited to collecting charges at the appropriate time, if growth does occur, and refunding the amounts so collected to the initial developer. The liability of the municipality would be clearly limited to being contingent upon the collection of future charges.

2. THE AREAS WHERE FULL CONSENSUS NOT REACHED

As noted above, there are some areas where a firm consensus has not been reached on front-end financing. These particular issues are discussed below.

a. Permissive versus Mandatory Legislation

It is now apparent that the development and home building industries wish the front-ending legislation to be mandatory, such that a municipality would be compelled to enter into such a system if requested by a developer.

AMO rejects this position in the belief that all discussions since the early 1980's have been toward permissive front-end financing legislation in conjunction with permissive lot levy legislation.

AMO sees considerable risk to municipalities if an imbalance was created through mandatory front-end legislation with only permissive lot levy legislation.

AMO strongly urges the rejection of front-ending legislation on a mandatory basis.

b. Use of Front-Ending to Permit Premature Development

As noted above in section B. 1., there is consensus that front-ending can not be utilized to encourage or permit the development of lands which have no development approval status.

AMO has some concern, however, that this restriction will not prohibit premature development or leap-frogging. There are times when a developer who is somewhat distant from existing municipal services is unable to proceed only because the cost

of the necessary work(s) is prohibitive to the developer and to the municipality. In this case orderly development will occur as the services (particularly sewer and water) are extended gradually over time.

The presence of front-ending legislation will make it easier for more distant development to proceed. The developer can obtain financing based on the likelihood of subsequent repayments and the work(s) is carried out at no cost to the municipality. AMO is aware that more scattered development generates greater ongoing operating costs for the municipality and is concerned that the wide-spread use of front-end financing may put undue pressure on municipal current budgets.

Should front-ending legislation be introduced as part of general lot levy legislation, AMO urges its members, when considering front-ending arrangements, to recognize that increased operating costs are often associated with more scattered development.

SECTION C: KEY ISSUES IN LOT LEVY/FRONT-ENDING LEGISLATION

The above discussion identifies, for each lot levies and front-end financing, the areas where AMO has reached consensus with the development and homebuilding industries and those areas where there is not yet agreement.

There are two key issues, however, which deserve further discussion as they are fundamental to achieving legislation which will serve the municipal sector fairly. These are the relationship between lot levy and front-end financing legislation and the conditions on which AMO accepts the up-front role of the OMB in the approval of lot levy by-laws.

1. Relationship Between Lot Levy and Front-End Financing Legislation

As noted above, a consensus has been reached that front-end financing legislation should be linked to and, in fact, be part of lot levy legislation. The commitment of the industries to this consensus is not as strong as AMO's, however, and the industries would clearly accept front-end financing by itself.

AMO believes there are significant risks to the municipal sector if front-end financing legislation were to proceed independently.

First, front-end financing involves the allocation of the costs of site-specific capital facilities amongst benefitting landowners. The emphasis on site-specific costs is in sharp contrast to the systemwide averaging of costs which the municipal sector has worked hard to have accepted over the past number of years. While the acceptability of averaging has grown and been made stronger recently by the Bradford Cabinet guidelines, further attacks on it could be envisaged if only front-ending legislation was to proceed.

Second, as noted above, many of the works which would be suggested for front-ending schemes will be works which form part of a municipality's system-wide lot levy. Only if the two pieces of legislation proceed together can the inter-relatinship of these capital works be effectively handled.

Third, it should be stressed that front-end financing arrangments are in fact lot levies for particular capital facilities. They apportion the costs of capital facilities across the landowners who

require the facilities on a per unit of development basis. Often they deal with facilities, such as trunk or treatment works, which are somewhat distant from the site, as do general lot levies. In short, front-end financing equates to the development and home-building industries supporting lot levies, including off-site services, when they desire such charges to allow development to proceed. It would seem equitable that legislation to permit front-end financing should proceed in conjunction with lot levy legislation (which governs per unit charges when desired by the municipality). Similarly, it has always been AMO's understanding that negotiations have been proceeding toward permissive, and not mandatory legislation for both lot levies and front-end financing.

AMO supports permissive front-end financing legislation only if such legislation is clearly linked to and forms part of the permissive legislation governing system-wide lot levies.

2. Acceptability of OMB Role in Approving Lot Levy By-Laws

The discussion of lot levy legislation in Section 1 indicated that AMO was prepared to accept a change to the OMB role in the lot levy process. AMO has conditionally agreed to include the OMB approval of the by-law (up-front before the by-law takes effect) in new lot levy legislation. The conditions dealt with acceptable administrative procedures (discussed above) and with the requirement that the OMB role only be included as part of the total lot levy package which satisfies AMO's position with respect to leviable services and percentages.

The rationale for this second condition is as follows. At the present time, a developer must be willing to delay his development if he wishes to appeal a municipality's lot levy. If the OMB finds in whole or in part in the developer's favour, that decision affects only one development and not the entire municipality. While it could be argued that this situation heavily favours the municipal sector it has been necessary to balance the uncertainly in the present legislation and individual OMB decisions.

The suggested change in the role of the OMB will allow developers, homebuilders or in fact their associations to appeal a by-law to the OMB without having to delay any specific development plans. While this would appear to favour the development industries, AMO is prepared to support this concept if it forms part of an acceptable lot levy package.

In the early 1980's, AMO suggested such an OMB role as part of lot levy legislation which would allow the municipalities to recover 100% of the growth-related capital costs through lot levies. In essence, the AMO position was that the unpredictability of individual OMB decisions would be removed if an acceptable methodology for calculating lot levies was entrenched in legislation. In this situation, the municipalities could accept an up-front approval role for the OMB.

The fundamental position of AMO at the present time is unchanged. AMO has been willing to compromise to a significant degree on the leviable services and the percentages of growth-related costs to be included in determining the lot levy amount. Only if the legislation provides for AMO's list of services at AMO's recommended levels, is AMO prepared to support the inclusion of the OMB in an up-front approval role.

It should be stressed that AMO believes it has made very considerable concessions in order to reach agreement and can not support further restrictions to the services and percentages to be included in the lot levy legislation. Replacement capital costs and capital costs to upgrade service levels will not be included in lot levies. Only growth-related capital costs to provide services at the generally-prevailing service levels will be part of levies. AMO has reduced the percentage of these costs which will be recovered through levies and has therefore required the existing community to make a significant contribution to growth-related costs - costs which would not be incurred if there were no growth.

AMO is, therefore, unable to support further reductions from its position of listed services or the relevant percentages of growth-related costs to be included in lot levy legislation.

AMO supports new lot levy legislation, including the role of the OMB in approving lot levy by-laws prior to their coming into force, only if the legislative package contains AMO's recommended list of leviable services with the percentage of costs included at AMO's recommended level.

AMO will endeavour to keep all municipalities aware of developments on this critical issue of lot levies and front-end financing and strongly urges all municipalities to carefully review any draft proposals or legislation submitted by the Province for consultation purposes. Only with this thorough review will AMO be able to make a most effective contribution to the consultation process.

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